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March 11, 2004

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MAR 11 2004

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

RE: In the Matter of: Tariff Filing of Kentucky Utilities Company and Louisville Gas and Electric Company for Non-Conforming Load Customers
KPSC Case Nos. 2003-00396 and 2003-00434 ✓
ON&W File No. 1/323

Dear Mr. Dorman:

Enclosed please find and accept for filing the original and ten (10) copies of LG&E and Kentucky Utilities Company's *Reply To North American Stainless' Response In Opposition To Kentucky Utilities Company's Motion To Consolidate* in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Sincerely,

Walter L. Sales

WLS/hkc
Enclosures
cc: Parties of Record (w/ encl.)

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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In the Matter of:

**PUBLIC SERVICE
COMMISSION**

**TARIFF FILING OF KENTUCKY UTILITIES) CASE NO. 2003-00396
COMPANY AND LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR NON-)
CONFORMING LOAD CUSTOMERS)**

**AN ADJUSTMENT OF THE ELECTRIC) CASE NO 2003-00434
RATES, TERMS AND CONDITIONS OF)
KENTUCKY UTILITIES COMPANY)**

**REPLY OF LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY TO
NORTH AMERICAN STAINLESS' RESPONSE IN OPPOSITION
TO KENTUCKY UTILITIES COMPANY'S MOTION TO CONSOLIDATE**

Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company (collectively, the "Utilities") have moved to consolidate the above cases. Kentucky Industrial Utility Customers, Inc. ("KIUC") and North American Stainless ("NAS") have filed responses in opposition to that motion to consolidate. Both filed their responses on or about February 20, 2004. KIUC certified service and served the Utilities with a copy of its one and a half page response in opposition. NAS certified that it served the Utilities with its response in opposition to the motion to consolidate, but in fact did not do so. Because KIUC's response raised no substantial or compelling issues, and believing that NAS did not intend to oppose the motion to consolidate, the Utilities determined that a Reply brief on their part was not necessary.

On or about February 23, 2004, NAS's responses to the Utilities' data requests were due. NAS did not file responses to those data requests.

On March 1, 2004, during a telephonic conversation seeking responses to the Utilities' data requests, Walter Sales, counsel for the Utilities, learned for the first time from James Brew, counsel for NAS, that NAS had in fact opposed the motion to consolidate, but had not served the Utilities. Moreover, NAS had apparently filed responses to data requests submitted to it by the Commission Staff and had never served those data responses upon the Utilities. On Friday, March 5, NAS sent responses to 80% of the Utilities' data requests via e-mail to the undersigned counsel at approximately 5:30 p.m. The balance of those responses was received by the undersigned at 12:30 p.m. on Monday, March 8, 2004. Hard copies of those responses were served today, March 11, 2004.

One of the principal arguments raised by NAS to oppose the Utilities' motion to consolidate is that any delay works to a serious disadvantage to NAS because it was expecting rate relief by March 31 from what NAS considers to be an unfair special contract. If NAS were concerned about the timing of the Commission's decision in this case, one would not expect NAS to ignore the data requests served upon it by the Utilities, or fail to serve the parties to the case with other filings made by NAS. Ultimately, this complete disregard by NAS for the Commission's procedures ensures a delay, caused by NAS, in the process that NAS suggests cannot be delayed.

NAS also filed a supplement to its response in opposition to the Utilities' motion to consolidate. In that supplement, NAS asks the Commission to place the cost of service study, prepared by The Prime Group and filed in the general rate case, into the record in the NCLS case. Additionally, NAS requests that if the Commission sustains the Utilities' motion to consolidate, that the Commission order the Utilities to bill NAS at an interim rate consistent with that offered customers on the LCI-TOD classification.

NAS' original opposition to the Utilities' motion to consolidate consists primarily of arguments on the merits of its position before the Commission in the general rate case and the NCLS case. When NAS relevantly addresses the issues raised in the motion to consolidate, it argues that a delay of the Commission's decision on the NCLS tariff's application for a few months (from early April through the end of June) will cause NAS to be unable to plan its production schedule and that NAS' uncertainty regarding the costs of its electricity will prevent it from pricing its product. Finally, NAS complains that having the terms of the proposed NCLS imposed on NAS will subject it to unpredictable system contingency curtailments that could hamper its production.

ARGUMENT

I. Cost of Service Study.

The Utilities obviously agree that the Commission should consider the cost of service study (the "COS") prepared by The Prime Group. Indeed, since the NCLS tariff and its relationship to the LCI-TOD tariff is a serious question of rate design in terms of allocating appropriate costs to those parties who create and use the demand, the COS would in fact be helpful in that regard. Consolidating the general rate case and the NCLS case would achieve that purpose, because then the COS would automatically be a part of both cases. In any event, the COS should also be accompanied by all of Steve Seelye's testimony and work papers, both in pre-filed form within the general rate case and what will follow in the hearing. It would not make sense, and it would be unfair, to consider simply the COS out of context of the testimony of Steve Seelye, both in pre-filed form and live at the hearing, and the responses to data requests

sponsored by Mr. Seelye which are germane to the COS. The best way for that to occur is to consolidate the cases.

Moreover, it creates duplicate records and redundancy for the COS to be placed in the record of both cases. The COS and the evidence associated with it will be the same. To include its admission in evidence in the NCLS case without consolidation simply is an inefficient use of the Commission's resources, especially since NAS is a party to both the general rate case and the NCLS case. NAS is not entitled to two bites of the regulatory apple. Accordingly, efficiency and fairness commend consolidation of the rate and NCLS cases.

II. The Rate NAS is Charged if Consolidation is Granted.

NAS proposes that, if the Utilities' motion to consolidate is sustained, NAS be placed on the LCI-TOD tariff so that it is not overcharged between the time when its special contract terminates at the end of this month and the time that the Commission ultimately decides all of the issues in the rate case—likely to be on or before June 30, 2004. KU opposes that request. It is unwarranted. There is no mechanism for KU to recover its costs if the Commission determines in the future that NAS should not be in the LCI-TOD rate classification because its load characteristics require it to pay a rate designed to recover the unusual demands it places on KU's system.

KU proposes placing NAS on the proposed NCLS tariff pending the Commission's determination of the outcome of the case, subject to refund if the Commission determines that NAS is entitled to a lower rate. This is a perfectly fair mechanism and a common method of managing this type of issue in the Utilities' experience.

NAS conveniently overlooks the fact that the NCLS tariff proposed by KU gives it a significant immediate rate reduction. Specifically, placing NAS on the proposed NCLS tariff,

pending resolution of the rate case, would effectuate an immediate \$1.2 million annual savings for NAS over its current special contract. Moreover, the rates in the proposed NCLS tariff are not significantly different from the proposed rates of the LCI-TOD tariff which the Utilities have filed in the general rate case. It is worth noting that this refund should not be terribly significant for the brief period of time (a few months) that NAS will be subject to billing under the NCLS tariff. Hence, NAS can adequately price its products and plan its production scheduling, because even if NAS is successful, the rate differential will not be significant.

On the other hand, to place NAS on the current LCI-TOD rate pending the outcome of the Commission's decision will put KU at risk of never recovering its costs should the Commission adopt a tariff for non-conforming load customers which would be applicable to NAS. In ruling on the motion to consolidate, the Commission should not award NAS an interim rate which, if later found to be unfair to the Utilities, would leave KU in the position of having to absorb costs that should have been paid by NAS. Under the filed rate doctrine, there is no way for KU to recover its costs if, in the interim, NAS is placed upon a rate that is lower than the one it should pay.

III. NAS Will Not Suffer Any Significant Operational Problems or Difficulties by a Delay in the Commission's Decision in the NCLS Case.

NAS argues that it will not be able to plan its production or price its products

if NAS does not know what rates ultimately will apply to its electric services, or whether bill demand will be determined in 5 minute or 15 increments. Similarly, NAS cannot be compensated for lost steel production for "system contingency" curtailments authorized under the proposed NCLS tariff on interim basis...

(NAS Response in Opposition at p. 6.)

KU has offered NAS a way out of their pricing problems simply by offering to place NAS on the NCLS tariff, with 5-minute intervals, which is not significantly different from the

proposed LCI-TOD tariff, with 15-minute intervals. The NCLS tariff itself represents over a \$1.2 million per year savings from the current special contract under which NAS is currently operating. Hence, NAS will have stability, reduced rates, and even enjoy the slight possibility of future savings if the Commission ultimately determines that NAS should be on the LCI-TOD rate classification.

NAS's complaint about the possibility of lost steel production because of system contingency curtailments proposed under the NCLS tariff is rather curious, given that NAS has been operating under a virtually identical system contingency curtailment provision pursuant to its current special contract with KU, which is a contract freely entered into by NAS, with the help and guidance of its counsel, and supported by NAS in its filing with this Commission. NAS has made absolutely no showing that the system contingency curtailment possibilities of which it complains have caused it any trouble in the past. Those curtailment possibilities exist to protect all of KU's ratepayers, and are necessary for the integrity of KU's system.

IV. Irrelevant Issues Raised by NAS.

In its opposition to the motion to consolidate, NAS also devotes a significant portion of its time simply rearguing the case on the merits of whether it should be placed on the proposed NCLS tariff rather than the LCI-TOD tariff. The motion to consolidate, which is only procedural in nature, does not address such substantive issues, and NAS's attempt to inject these issues should be rejected. However, a few of NAS's additional points should be addressed.

On page 7 of its response NAS argues that,

Mr. Seelye functionalizes and assigns costs based on designated class (not including the contemplated NCLS) contributions to base, intermediate and system hourly peak loads (the 'BIT' method). It is not a reasonable, or fair, solution to

delay a decision in Case No. 2003-00396 when the rate case does not even offer the particular cost of service assessment KU asserts it needs.

In fact, the non-conforming load rate is not designed to reflect the ramping and load-following capability of KU's generation system. Rather, the Utilities seek simply a fair accounting of the generation capacity that a non-conforming load customer requires at all times from the Utilities' system. Hence, the Utilities have requested a five minute demand and otherwise the application of typical rate making for demand and energy charges. No unusual rate making is required. In that regard, KU has engaged in further research and has determined that in fact a five minute demand has been ordered and approved in a number of situations. See the following list of cases where a five minute demand has been approved by state regulatory authorities. *Sierra Pacific Power Company*, No.82-08-43, 1983 Cal. PUC LEXIS 901(Cal Pub. Util. August 19, 1982); *Pacific Gas and Electric Company*, No. 97-09-047, 1997 Cal. PUC LEXIS 867; 75 CPUC2d 349 (Cal. Pub. Util. Sept. 3, 1997); *Southern California Edison Company*, No. 87-12-066, 1987 Cal. PUC LEXIS 415; 26 CPUC2d 392 (Cal. Pub. Util. Dec. 22, 1987); *Southern California Edison Company*, No. 87-01-017, 1987 Cal. PUC LEXIS 415; 26 CPUC2d 392 (Cal. Pub. Util. Dec. 22, 1987); *San Diego Gas & Electric Company*, No. 98-06-049, 1998 Cal PUC LEXIS 490; 80 CPUC2d 507 (Cal. Pub. Util. June 18, 1998); *Portland General Electric Company*, No. 01-777, 2001 Ore. PUC LEXIS 415; 212 P.U.R.4th 1 (Ore. Pub. Util. Aug. 31, 2001); *Delmarva Power & Light Company*, No. 84-18, 1984 Del. PSC LEXIS 2 (Del. Pub. Serv. May 29, 1984).

The Utilities have presented a cost of service study that it believes is appropriate for a firm service non-conforming load customer class. NAS has presented nothing. KU has not asserted the need for some other hypothetical study that NAS says it wants and has not offered into evidence.

NAS also argues repeatedly that it is being treated specially on grounds that it is the only customer that the NCLS tariff will affect. That argument presumes, however, that there will be no other customers similar to NAS. The Utilities have proposed an NCLS tariff that will apply to all customers who share similar characteristics and the Utilities have been approached by other potential customers who would fall into the NCLS classification. The fact that NAS infrequently uses the generation it demands in no way means that KU incurs no cost to ensure that the generation is available to serve NAS when NAS demands it, without detrimentally affecting service to all other customers.

In any event, the NCL tariff is of general application to all customers who share similar characteristics. The fact that NAS is the only current ratepayer who would be on that tariff does not mean that the tariff was designed for NAS. It was not so designed. Careful consideration was given to the problem of serving any non-conforming load customer, whether it is NAS or others who might approach the Utilities. The rate that will be applied to all such customers simply attempts to charge those customers for their fair share of the cost to serve.

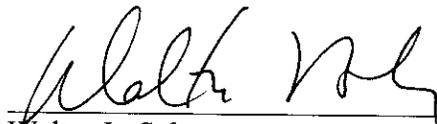
The NCL tariff also imposes terms of service which are designed to protect the system and the other hundreds of thousands of ratepayers who depend upon KU's and LG&E's service. It would be irresponsible for the Utilities not to protect all of their ratepayers from the unusual characteristics of a few who have such atypical usage patterns.

CONCLUSION

Based upon the foregoing, the Utilities' motion to consolidate should be sustained. The Utilities recommend that the Commission enter an order consolidating these cases, and authorizing KU, at the end of the current special contract with NAS, to implement its proposed

NCLS tariff subject to refund in the event the Commission determines that NAS should have paid a lower rate. If the Commission consolidates these cases, the Commission need not rule on NAS' request that the Prime Group's cost of service study be considered as evidence in the NCLS tariff case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing was mailed this 11th day of March, 2004 to the following by first class mail, postage prepaid:

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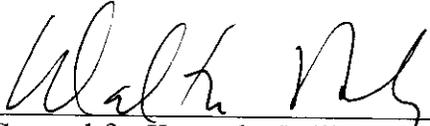
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